

BEFORE THE
GOVERNING BOARD
SAN PASQUAL VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THERESE GEORGE

And

DONALD LITTLE,

Respondents

OAH No. 2011020732

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Winterhaven, California on April 7, 2011.

Jacqueline S. McHaney, Esq. of Thurbon & McHaney, LP represented the San Pasqual Valley Unified School District (the District).

John W. Breeze, Esq. represented respondent Therese George (George) and respondent Donald Little (Little).

The matter was submitted on April 7, 2011.

FACTUAL FINDINGS

1. David Schoneman (Superintendent) made and filed the Accusation dated March 21, 2011, while acting in his official capacity as Superintendent of the district.
2. Respondents are certificated district employees.
3. On February 8, 2011, the District's Governing Board (Board) adopted Resolution No. 2010.11.6, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Board determined that

the particular kinds of services that must be reduced for the 2011-2012 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
High School Social Studies	1.00
Administration – Coordinator of Special Projects	1.00
High School Biological Science	0.50
<u>Total FTE's</u>	<u>2.50</u>

The services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

4. The Board further determined in Resolution No. 2010.11.6, that pursuant to the resolution and Education Code sections 44955, 44956 and 44957, bumping rights “shall be determined upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee may bump or will be assigned, a BCLAD if the assignment requires that authorization; and EL authorization if the assignment requires that authorization. Further, that due to the specific need of the District to hire and retain only highly qualified teachers in academic subject areas ‘competency’ shall require (highly qualified) current confirmation of qualification of academic subject competency, or verifiable eligibility for competency if not previously reviewed by the District, in all subjects of a proposed assignment, including assignments teaching multiple academic subjects and assignments in secondary alternative schools in accordance with the NCLB.”

5. The Board’s decision to reduce or discontinue the services listed in Finding 3, above, is neither arbitrary nor capricious; rather, it is due to substantial decreases in the operating budget, and is, therefore, a proper exercise of the Board’s discretion. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

6. The Superintendent and District considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

7. On March 10, 2011, the Superintendent timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the District’s intent not to reemploy them for the upcoming school year. Accordingly, respondents received written notice, on or before March 15, 2011, notifying them that the Board had recommended they not be re-employed in the upcoming, 2011-2012, school year.

8. On March 22, 2011, respondents were served with a copy of the Accusation, a blank Notice of Defense, a Notice of Hearing and other related materials.
9. Respondents timely requested a hearing and the instant hearing ensued.
10. Each respondent was properly noticed of the date, time and place of the instant hearing.
11. All prehearing jurisdictional requirements have been met.
12. Respondents have been selected for notice of layoff pursuant to their seniority date, which is based on the first day of paid service of each respondent in a probationary position. Respondents were ranked for layoff in the inverse order of their seniority dates.
13. Respondents asserted that they should be allowed to “bump” Jennifer Wallace (Wallace), a less senior, probationary teacher currently teaching the Community Day School Program (CDS). Respondents’ assertions are unavailing. Wallace, although less senior than both respondents, holds a Clear Multiple Subject credential and is teaching CDS in a self-contained, continuation classroom setting, wherein students with extreme disciplinary problems are taught (students on criminal probation, who are habitually truant or have been expelled from school). Wallace has been teaching CDS for the past year with the district and has gained “hands-on” expertise in dealing with problem students and the personnel who monitor them, e.g., probation officers. In determining that neither respondent could bump Wallace, the district considered the fact that both respondents hold Clear Single Subject credentials in either Biological Science (George) or Social Science (Little); therefore, neither is qualified to teach all of the subjects being taught in the CDS, self-contained classroom setting. Consequently, pursuant to the bumping criteria set forth in board resolution number 2010.11.6 (Finding 4), respondents lack the ability to bump into Wallace’s CDS position.
14. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.
2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Pursuant to section 44995, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

The District has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at 136-137.)

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority’s discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the District does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

5. The services listed in Factual Finding 3 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

6. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District for budgetary reasons.

7. Cause to reduce or discontinue services relates solely to the welfare of the District and its pupils within the meaning of Education Code section 44949.

8. Cause exists to give respondent’s notice that their services are not needed for the ensuing, 2011-2012, school year.

ADVISORY DETERMINATION

The following advisory determination is made:

Prior to May 15, 2011, notice shall be given to respondents that their services will not be required for the ensuing school year due to the budget deficit and the resulting need to reduce and/or discontinue certain services.

DATED: April 21, 2011

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings